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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/853,104

05/10/2001

James R. Richard

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5802

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06/17/2004

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EXAMINER

HOEY, ALISSA L

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 06/17/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/853,104

**Applicant(s)**

RICHARD, JAMES R.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

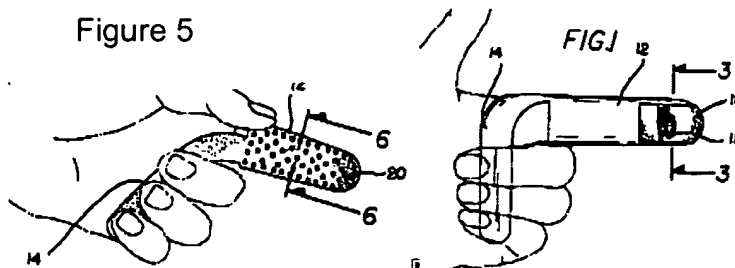
1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/19/04 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashey (US 6,112,356).



In regard to claim 1, Hashey provides an elongated member integrally formed of a flexible material having a handle portion and a head portion (figures 1 and 5,

identifiers 14 and 12: column 1, lines 48-50). A cleaning portion attached to the head portion of the elongated member and comprising a plurality of cleaning projections protruding outwardly from the head portion of the elongated member (figure 3, identifiers 16). The handle portion is formed of a deformable material (column 3, lines 64-67). The deformable handle portion of Hashey is capable of being deformed around a user's teeth and the head portion of Hashey is capable of being pressed with the tongue against the top surface of the roof of a user's mouth to conform to the shape (column 3, lines 11-14).

However, Hashey fails to specifically teach that the head portion of the device of Hashey is sized and shaped to fit within the roof of a user's mouth and be in contact with the roof.

It would have been obvious that the head of the device of Hashey would be sized and shaped to fit within the roof of a user's mouth, since the head of the device of Hashey is taught as a device to clean the teeth inside a user's mouth. Teeth are located inside a user's mouth and therefore the head of the device of Hashey would be sized to fit within the user's mouth to clean the teeth. Further, head portion can be in contact with the roof of the mouth as desired by the user. The finger of a user would be able to fit within the roof of a user's mouth so it would be obvious that the head of the device of Hashey provided on a finger would fit within the roof of a user's mouth.

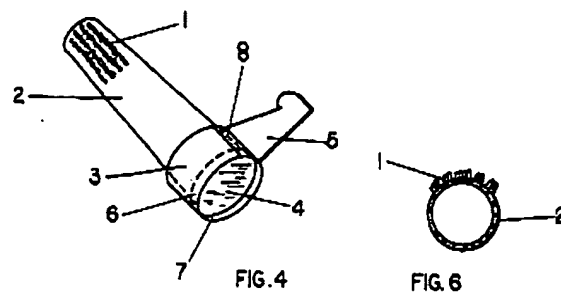
In regard to claim 2, Hashey provides the elongated member being integrally formed of a thin, flexible plastic material (column 3, lines 57-59).

In regard to claim 6, Hashey provides an antiseptic or antimicrobial compound carried in the cleaning portion (column 4, lines 9-12).

In regard to claim 7, Hashey provides the head portion of the elongated member being wider than the handle portion of the elongated member (figure 5, identifiers 14 and 20: column 4, lines 4-5).

4. Claims 3-5 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashey in view of Burrello (US 5,356,005).

In regard to claim 3-5 Hashey provides a device as described above in claim 1. However, Hashey fails to teach the cleaning portion comprising a backing material having an adhesive on a first surface thereof adhered to the head portion of the elongated member and having a plurality of projections protruding from a second surface. The plurality of projections comprise a plurality of fiber loops from a hook and loop fastening system.



Burrello provides a device having a cleaning portion comprising a plurality of projections adhered to the head portion of the elongated member (figure 6, identifier 1: column 2, lines 19-22). The plurality of projections comprises a plurality of fiber loops from a hook and loop fastening system (column 1, lines 53-62).

It would have been obvious that loops from a hook and loop fastening system would have a backing material on which the loops are carried, since that is how loops from a hook and loop fastening system are formed. Further, the projections being adhered to the head portion can be adhered by any adhering means including glue or cement which are adhesives that are well known in the art to attach loops of a hook and loop fastener to an article.

In regard to claims 8-11, Hashey provides an elongated member integrally formed of a thin, flexible plastic material with a head portion and a handle portion. A cleaning portion comprising a plurality of protrusions and comprising an antiseptic or antimicrobial compound (column 4, lines 9-12). The handle is formed of a deformable material (column 3, lines 64-67). Further, Hashey teaches the head portion having a greater width than the handle portion (figures 1 and 5, identifiers 14 and 12: column 4, lines 4-5). The deformable handle portion of Hashey is capable of being deformed around a user's teeth and the head portion of Hashey is capable of being pressed with the tongue against the top surface of the roof of a user's mouth to conform to the shape (column 3, lines 11-14).

However, Hashey fails to specifically teach that the head portion of the device of Hashey is sized and shaped to fit within the roof of a user's mouth and be in contact with the roof.

It would have been obvious that the head of the device of Hashey would be sized and shaped to fit within the roof of a user's mouth, since the head of the device of Hashey is taught as a device to clean the teeth inside a user's mouth. Teeth are located

inside a user's mouth and therefore the head of the device of Hashey would be sized to fit within the user's mouth to clean the teeth. Further, head portion can be in contact with the roof of the mouth as desired by the user. The finger of a user would be able to fit within the roof of a user's mouth so it would be obvious that the head of the device of Hashey provided on a finger would fit within the roof of a user's mouth.

Further, Hashey fails to teach the cleaning portion comprising a backing material having an adhesive on a first surface thereof adhered to the head portion of the elongated member and having a plurality of projections protruding from a second surface. The plurality of projections comprise a plurality of fiber loops from a hook and loop fastening system.

Burrello provides a device having a cleaning portion comprising a plurality of projections adhered to the head portion of the elongated member (figure 6, identifier 1: column 2, lines 19-22). The plurality of projections comprises a plurality of fiber loops from a hook and loop fastening system (column 1, lines 53-62).

It would have been obvious that loops from a hook and loop fastening system would have a backing material on which the loops are carried, since that is how loops from a hook and loop fastening system are formed. Further, the projections being adhered to the head portion can be adhered by any adhering means including glue or cement which are adhesives that are well known in the art to attach loops of a hook and loop fastener to an article.

In regard to claim 12, Hashey provides an elongated member integrally formed of a thin, flexible plastic material with a handle portion and a head portion. The head

portion having a width greater than the width of the handle portion. A cleaning portion attached to the head portion of the elongated member. The handle portion is formed of a deformable material (column 3, lines 64-67). An antiseptic or antimicrobial compound carried on the cleaning portion (column 4, lines 9-12). The handle portion of Hashey is capable of being deformed around a user's teeth and the head portion of Hashey is capable of being pressed with the tongue against the top surface of the roof of a user's mouth to conform to the shape (column 3, lines 11-14).

However, Hashey fails to specifically teach that the head portion of the device of Hashey is sized and shaped to fit within the roof of a user's mouth and be in contact with the roof.

It would have been obvious that the head of the device of Hashey would be sized and shaped to fit within the roof of a user's mouth, since the head of the device of Hashey is taught as a device to clean the teeth inside a user's mouth. Teeth are located inside a user's mouth and therefore the head of the device of Hashey would be sized to fit within the user's mouth to clean the teeth. Further, head portion can be in contact with the roof of the mouth as desired by the user. The finger of a user would be able to fit within the roof of a user's mouth so it would be obvious that the head of the device of Hashey provided on a finger would fit within the roof of a user's mouth.

However, Hashey fails to teach the cleaning portion comprising the loop portion of a hook and loop fastening system.

Burrello provides Burrello provides a device having a cleaning portion comprising a plurality of projections adhered to the head portion of the elongated member (figure 6,



identifier 1: column 2, lines 19-22). The plurality of projections comprises a plurality of fiber loops from a hook and loop fastening system (column 1, lines 53-62).

It would have been obvious to have provided the elongated cleaning device of Hashey with the cleaning loop fiber portion adhered to the head portion of Burrello, since the adhered loop fiber portions being the cleaning projections of Hashey would provide a device that would clean a user's mouth effectively without being too harsh on the user's mouth and at the same time forming loops to capture bacteria or food particles from a user's mouth. The adhesive used to secure the loops to the head would provide a secure attachment means so that the loops can't become easily removed from the head of the device.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carr, Welker, Reinold, Panvanelli, Friedman, Mas et al., Courney, Stelmach, Daly, Jensen, Adedokun, Mabry and Haneiph are all cited to show closely related devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

alh

  
GARY L. WELCH  
PRIMARY EXAMINER